Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
	)	
1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	**CC Docket No. 98-171**
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	**CC Docket No. 90-571**
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	**CC Docket No. 92-237** **NSD File No. L-00-72**
	)	
Number Resource Optimization	)	**CC Docket No. 99-200**
	)	
Telephone Number Portability	)	**CC Docket No. 95-116**
	)	
Truth-in-Billing and Billing Format	)	**CC Docket No. 98-170**

Reply Comments of the Industrial Telecommunications Association, Inc.

The Industrial Telecommunications Association, Inc. (ITA) hereby respectfully submits its reply comments in response to the Federal Communications Commission's *Further Notice of Proposed Rule Making* (2002 NPRM) in the above-referenced matter.[1] As discussed in more

[1] *See* Federal State Joint Board on Universal Service; 1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech

detail below, ITA agrees with the Commission and a large number of the commenters that a connection-based contribution mechanism will increase the universal service burden on small businesses and low-volume carriers, while also diminishing the line between intrastate and interstate revenue. ITA seeks the Commission's support to specifically exempt non-interconnected private carriers from paying into the universal service support mechanism, and further urges it to retain the *de minimis* exemption for carriers whose annual interstate revenues are expected to be less than $10,000 per year.

I. Statement of Interest

ITA is a Commission-certified frequency advisory committee coordinating in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate business and industrial/land transportation radio stations on frequency assignments allocated between 30-900 MHz.

ITA enjoys the support of a membership including more than 3,500 licensed two-way land mobile radio communications users, private mobile radio service (PMRS) oriented radio dealer organizations, and the following trade associations:

Alliance of Motion Picture and Television Producers
Aeronautical Radio, Inc.
Associated Builders & Contractors, Inc.
Florida Citrus Processors Association
Florida Fruit & Vegetable Association
National Mining Association
National Propane Gas Association

Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, NSD File No. L-00-72, *Further Notice of Proposed Rulemaking* (rel. Feb. 26, 2002) (2002 NPRM).

National Ready-Mixed Concrete Association
National Utility Contractors Association
New England Fuel Institute
United States Telephone Association

In addition, ITA is affiliated with the following independent market councils: the Council of Independent Communication Suppliers (CICS), the Taxicab & Livery Communications Council (TLCC), the Telephone Maintenance Frequency Advisory Committee (TELFAC), and USMSS, Inc.

Many of ITA's members are "*de minimis* carriers"[2] who operate under Part 90 of the Commission's rules either as a PMRS licensee or CMRS carrier that uses or provides private, internal communications systems for the purpose of facilitating smooth business operations. In either case, the radios are used for the coordination of daily business activities, such as building maintenance, security and safety operations, among other activities associated with sound business practices. Moreover, a substantial portion of ITA's members meet the definition of a "small business" under the Small Business Act.[3]

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2 *See* Federal State Joint Board on Universal Service; 1998 Biennial Regulatory Review-Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number resource Optimization; Telephone Number Portability, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, NSD File No. L-00-72, *Notice of Proposed Rulemaking* (rel. May 8, 2001) at ¶ 31 and n.73, stating that wireless carriers with an expected universal service contribution less than $10,000 are exempt from contributing to universal service mechanisms (2001 NPRM). *See also*, 47 C.F.R. § 54.708. *See also*, 47 U.S.C. § 254(d).

3 5 U.S.C. § 601(3), whereby a "'small business' has the same meaning as the term 'small business concern'" under 15 U.S.C § 632. A "small business concern" meets the following criteria: "(1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any

II. Background

On May 8, 2001, the Commission released a *Notice of Proposed Rulemaking* (2001 NPRM), which sought to revisit its universal service contribution mechanism.[4] In response to the Commission's 2001 NPRM, many of ITA's members filed joint comments and reply comments urging the Commission to retain the *de minimis* exemption for small businesses throughout the nation.[5] Now, the Commission seeks further comment on a proposal to alter the universal service contribution mechanism from a revenue-based to a connection-based assessment.

III. Discussion

ITA, as addressed below, believes the proposed changes to the universal service fee assessment mechanism, if implemented, would be inequitable and burdensome for small businesses and low-volume users. Changing from a revenue-based collection mechanism to a connection-based mechanism would put undue burden on small carriers, especially if the *de minimis* exemption is not retained. The connection-based assessment mechanism may also lead to problems in distinguishing intrastate and interstate telecommunications services when assessing the universal service fee a carrier owes. Furthermore, in addition to retaining the *de minimis* exemption, carriers that are not connected to a publicly switched network should not be assessed a Universal Service fee.

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additional criteria established by the Small Business Administration."

4 2001 NPRM.

5 *See* Joint Comments of 26 Concerned "De Minimis" Carriers, FCC 01-145 (June 25, 2001); *See also*, Reply Comments of the 26 Concerned "De Minimis" Carriers, FCC 01-145 (July 9, 2001).

A. <u>A Connection Based Contribution Mechanism Places a Disproportionately Large Universal Service Burden on Small Businesses and Low-Volume Users</u>

In the 2002 NPRM, the Commission sought comment as to whether the connection-based methodology would be "equitable and nondiscriminatory" under section 254(d) of the Communications Act, as amended.[6] Later in the 2002 NPRM, the Commission conceded that "a connection-based assessment…could result in increased contribution obligations for connections provided to certain categories of customers (for example, for connections provided to certain low-volume users)."[7] To illustrate this point, consider the needs of a small carrier providing interstate services in a rural market:

> In this market, cellular carriers would be required to pay $1.00 for every handset that is activated on their system. If the average cellular bill cost anywhere from $40 to $60 per month, the proportion of universal service to be paid as part of the bill is 2.5% and down to 1.6% respectively. If a PMRS service provider (operating a UHF trunking system) also pays the same $1.00 per unit that is activated on its systems, but only charges $12.00 per month/per unit for service, the private carrier's universal service charge as a proportion of its bill is 8.33%.

ITA agrees with numerous commenters who mentioned the inequity of the connection-based approach.[8] The contribution system, as described above, certainly does not seem "equitable and nondiscriminatory." This pricing scheme would disproportionately favor the large carriers over small providers, and therefore, violates Section 254(d) of the Communications Act.[9]

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6 2002 NPRM at ¶ 67. *See also*, 47 U.S.C. § 254(d).

7 2002 NPRM at ¶ 73.

8 Comments of TracFone Wireless, Inc. at p. 6-9; Comments of Western Wireless Corporation at p. 4; Comments of The Nebraska Independent Companies at p. 2-3; and Comments of Teletouch Communications at p. 4-5.

9 2002 NPRM at ¶ 67. *See also*, 47 U.S.C. § 254(d).

B. The Courts Have Ruled That Charging a Universal Service Fee on Intrastate Service is Illegal.

Changing the contribution mechanism from a revenue-based to a connection-based assessment could diminish the lines between whether contributions are based on intrastate or interstate revenues. Many commenters have noted that *Texas Office of Public Utility Counsel, et al. v FCC* clearly states that the Communications Act did not give the FCC authority to impose a universal service fee on carriers based on their intrastate revenues.[10] ITA asks the Commission to remain cognizant that intrastate services could be included in the connection-based contribution assessment. The distinctions between the intrastate and interstate services of telecommunications providers will become unclear under this proposal, which could adversely affect thousands of land mobile communications carriers who are providing private, internal telecommunications services for area businesses solely within one state's borders. These intrastate telecommunications services are explicitly exempted from contributing to the universal support fund as determined by the Fifth Circuit Court.

C. The *De Minimis* Exemption for Carriers Whose Expected Contributions are Less than $10,000 Should be Retained.

The *de minimis* exemption is crucial for many small businesses impacted by this proceeding.[11] Implementing a connection-based assessment mechanism and mandating payment for carriers whose compliance costs would exceed the actual payment, will impinge on the ability of small providers to continue providing low-cost services for the many critical services

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[10] *See* Texas Office of Public Utility Counsel, et al. v FCC 183 F, 3d 393 (5th Cir. 1999). *See also,* Comments of United States Cellular Corporation at p. 6-9; Comments of the Allied Personal Communications Industry Association of California at p. 6; Comments of The Nebraska Independent Companies at p. 9-10; and Comments of AT&T Wireless Services, Inc. at p. 3-6.

that the economy and our nation's consumers depend on. The costly fees could stifle competition, as it diminishes the ability of small carriers to remain competitive in a market with larger carriers who have the capital to pay this fee and benefit from the new connection-based assessment mechanism.

When crafting the *de minimis* exemption, the Commission decided that the actual costs of compliance for carriers should not exceed the administrative costs of collecting universal service fees.[12] Carriers who meet this description, then, were considered exempt from universal service support. Small carriers still have a need for the *de minimis* exemption, and that the need would increase if the assessment mechanism would charge small carriers a disproportionately higher amount of universal service support than larger carriers.

In the 2002 NPRM, the Commission also sought comment on whether "non-connection-based providers could be exempted from contributing under a revised *de minimis* exemption."[13] Private providers who are not interconnected with a PSTN use the spectrum in a much different manner than interconnected carriers. The difference between the two types of providers can be drawn based on the acquisition of revenue. The business of private, non-interconnected carriers is not based on revenue directly from the spectrum, but based on the supply of critical internal business communications services for such operations as airline security; oil field communications; maintenance or installation in manufacturing plants; and communications for the safety of employees and the public. On the other hand, many (but not all) interconnected carriers offer services that may result in competition with other telecommunications providers who are seeking to gain a profit directly from use of the spectrum. These inherent differences

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[11] *See* Section254(d) of the Communications Act 47 C.F.R. § 54.708.

[12] *See* 2001 NPRM para. 31.

between the use of interconnected service providers and non-interconnected service providers easily demonstrate why non-interconnected service providers should be specifically exempt from contributing into the universal service fund.

IV. Conclusion

For the above stated reasons, ITA believes the Commission should not implement the flat-fee, connection-based assessment mechanism for contribution into the universal service fund. Such an assessment would disadvantage small carriers. Moreover, ITA encourages the Commission to specifically exempt non-interconnected carriers from paying for universal service

[13] 2002 NPRM para. 66.

support, and further urges the Commission to retain the *de minimis* exemption relied on by many small carriers providing telecommunications services.

Respectfully submitted,

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